

Friday, 23 October, 2009 04:22:34 PM
 Clerk, U.S. District Court, ILCD

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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF FLORIDA
 MIAMI DIVISION

CASE 04-60001-CR-COOKE

THE UNITED STATES OF AMERICA,
 Plaintiff,

vs.

MIAMI, FLORIDA
 JANUARY 22, 2008
 TUESDAY - 11:00 A.M.

ADHAM AMIN HASSOUN,
 KIFAH WAEL JAYYOUSI,
 JOSE PADILLA,
 a/k/a "Ibrahim,"
 a/k/a "Abu Abdullah the Puerto Rican",
 a/k/a "Abu Abdullah Al Mujahid",

Defendants.

TRANSCRIPT OF SENTENCING PROCEEDINGS
 BEFORE THE HONORABLE MARCIA G. COOKE,
 UNITED STATES DISTRICT JUDGE

DAY 9

APPEARANCES:

FOR THE GOVERNMENT:

RUSSELL KILLINGER, A.U.S.A.
 BRIAN K. FRAZIER, A.U.S.A.
 JOHN SHIPLEY, A.U.S.A.
 STEPHANIE PELL, A.U.S.A.
 United States Attorney's Office
 99 N.E. 4th Street
 Miami, FL 33132

FOR THE DEFENDANT HASSOUN:

KENNETH SWARTZ, ESQ.
 Swartz and Lenamon
 100 N. Biscayne Blvd. 21st Floor
 Miami, FL 33132 - 305/579-9090
 ken@swartzlawyer.com

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FOR THE DEFENDANT HASSOUN

JEANNE BAKER, ESQ.
 2937 SW 27th Ave., Suite 202
 Coconut Grove, FL 33133 305/443-1600
 jbakerefourdefenders.com

FOR THE DEFENDANT PADILLA:

MICHAEL CARUSO, A.F.P.D.
 ORLANDO do CAMPO, A.F.P.D.
 Federal Public Defender's Office
 150 W. Flagler Street
 Miami, FL 33131

FOR THE DEFENDANT JAYYOUSI:

WILLIAM SWOR, ESQ.
 3060 Renobscot Building
 645 Griswold Street
 Detroit, MI 48226 313/967-0200

MARSHALL DORE LOUIS, ESQ.
 Sinclair, Louis, Heath, Nussbaum &
 Zaveritnik, P.A.
 169 East Flagler Street, Suite 1125
 Miami, FL 33131 305/374-0544
 mdl@sinclairlouis.com

REPORTED BY:

ROBIN MARIE DISPENZIERI, RPR
 Official Federal Court Reporter
 301 North Miami Avenue, 6TH Floor
 Miami, FL 33128 - 305/523-5158

SENTENCING PROCEEDINGS - 11:15 A.M.

THE COURT: For the record, appearing on behalf of the United States.

MR. KILLINGER: Good morning, Your Honor. Russ

Killinger, Brian Frazier, Stephanie Pell, John Shipley and John Kavanaugh.

THE COURT: Appearing on behalf of Defendant Hassoun.

MR. SWARTZ: Ken Swartz and Jeanne Baker on behalf of Mr. Hassoun.

THE COURT: Appearing on behalf of Defendant Jayyousi.

MR. SWOR: William Swor and Dore Louis on behalf of Dr. Jayyousi.

THE COURT: Appearing on behalf of Defendant Jose

Padilla.

MR. CARUSO: Michael Caruso and Orlando do Campo on behalf of Jose Padilla.

THE COURT: On behalf of Mr. Hassoun, are you prepared this morning to proceed to sentencing?

MS. BAKER: We are.

THE COURT: On behalf of Mr. Jayyousi, Mr. Swor, are you prepared to proceed to sentencing this morning?

MR. SWOR: Yes, Your Honor.

THE COURT: On behalf of Mr. Padilla, Mr. Caruso, are you prepared to proceed with sentencing?

MR. CARUSO: Yes, we are, Your Honor.

THE COURT: Everyone, you may be seated.

Over the past few weeks I held a sentencing hearing in this matter and the hearing was bifurcated. I felt that this bifurcated hearing would enable me to comply with the Supreme Court mandate in Rita, and the District Court should first begin all sentencing proceedings by computing the applicable guideline range.

First, I allowed the defendants and the government to present objections to the PSI specifically to the offense conduct, enhancement, criminal history calculations, and role in the offense, and the computation of the advisory guideline range as well. At the conclusion of phase one, I ruled on the various objections and made additions, deletions and corrections to the role in the offense paragraphs contained in the PSI. I also ruled on the defendants' other objections. At the conclusion, each defendant was in the same guideline range, 360 to life.

The guidelines; however, are not the only consideration the Court must take in making a sentence in this case. Therefore, in the second phase the defendants presented evidence, and I heard arguments on the 18 U.S.C. 3553 factors to determine whether they support that sentence that each defendant requested.

Over the course of several days, the defendants presented witnesses, documents, photographs, transcripts of

1 recorded conversations and fax transmissions, witnesses
 2 traveled to this hearing from California, Detroit, Washington
 3 D.C. and elsewhere. I heard the statements of witnesses, and I
 4 read the letters of families, friends and associates.

5 The government also presented evidence in rebuttal.
 6 The transcripts of these proceedings cover several hundred
 7 pages.

8 In the post Booker, Rita, Gall sentencing world, it is
 9 imperative that I make an individual assessment of each
 10 defendant based upon the facts presented. This assessment is
 11 based on the factors, all is outlined in 18 U.S.C. 3553A

12 I must impose a sentence sufficient but not greater
 13 than necessary to comply with the purposes set forth in 3553A2.
 14 In determining this sentence, I must consider the nature and
 15 circumstances of the offense, and the history and
 16 characteristics of each defendant.

17 The crimes here are very serious, but I think it's
 18 important at this juncture to state what this case is not
 19 about. No so-called act of terrorism occurred on United States
 20 soil. These defendants did not seek to damage United States
 21 infrastructure, shipping interests, power plants or government
 22 buildings. There was never a plot to harm individuals inside
 23 the United States or to kill government or political officials.
 24 There was never a plot to overthrow the United States
 25 government.

1 The defendants maintain that their acts were not
 2 criminal, but educational and humanitarian nature to inform the
 3 world and the Muslim community of the status of Muslims abroad
 4 and to provide aid for Muslims in need. The jury's verdict
 5 reject these arguments and contentions and found that the
 6 defendants' acts were criminal.

7 What the defendants sought to do was provide support
 8 to people sited in various conflicts involving Muslims around
 9 Eastern Europe, the Middle East and Northern Africa was found
 10 to be criminal. The evidence indicated the defendants sought
 11 to provide financial, personnel and material to individuals
 12 engaged in armed conflict in these areas. This material
 13 support is a violation of the statutes that form the basis of
 14 this indictment.

15 However, there is no evidence that these defendants
 16 personally maimed, killed or kidnapped anyone in the United
 17 States or elsewhere.

18 Also, the government has pointed to no identifiable
 19 victims. Despite this, this behavior is a crime. The defense
 20 has made much throughout the trial that the government
 21 overcharged these defendants, and the defendants have suggested
 22 other possible charges that carry a range consistently lower
 23 than the sentences available to the government in this case.
 24 As I have consistently stated throughout the trial and in other
 25 proceedings, charging decisions are well within the province of

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1 the Executive Branch.

2 The government contends that each defendant in this
3 case should receive life imprisonment. The government argues
4 the seriousness of the offense, the eight year length of the
5 conspiracy, the nature of the crimes, and this is essentially a
6 conspiracy to solicit murder justified life sentences.

7 Obviously, the defendants categorically disagree, and
8 each defendant has asked this Court to vary and to sentence the
9 defendants outside the advisory guideline range.

10 First, I will review the history and characteristics
11 of each of the defendants based upon the evidence presented at
12 trial and the sentencing hearings.

13 Mr. Hassoun is a devout Muslim. Prior to the instant
14 offense, Mr. Hassoun had never been arrested or convicted of a
15 crime. As a youngster, he lived with a Lebanese conflict, and
16 he knew firsthand what happened to a country when internal
17 politics turned violent. His employer and fellow employees
18 describe him as smart, compassionate and a caring human being.
19 He reached out to people in this community here and overseas,
20 often giving of himself personally and financially. Many wrote
21 letters of support to the Court. The plight of Muslims
22 throughout the world pained and moved him. These strong
23 feelings were his motivation to violate the statutes in this
24 case. He knew what it was like to live through armed conflict
25 and religious persecution.

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1 The defendant moved to this country, worked, married
2 and had a family. He worked for Marcom Technologies. His
3 employer and fellow employees spoke highly of him. He was a
4 valuable employee. He worked with many employees of many
5 different religions and ethnicity, and there was never any
6 evidence of conflict between Mr. Hassoun and other employees
7 based upon religious beliefs.

8 The government intercepted most of Mr. Hassoun's
9 telephones, work, home, cell and fax. The interceptions and
10 investigation continued for many, many years. He was
11 questioned and never charged with a crime. The government knew
12 where Mr. Hassoun was, knew what he was doing and the
13 government did nothing.

14 This fact does not support the government's argument
15 that Mr. Hassoun poses such a danger to the community that he
16 needs to be imprisoned for the rest of his life. In fact, when
17 he was initially arrested and placed in custody for almost two
18 years, it was on immigration charges and not the charges in
19 this case. He was not in an isolated or special housing
20 facility at that time.

21 Despite monitoring Mr. Hassoun for many years, the
22 government is able to point to only one check to Global Relief
23 Foundation as evidence of his support that he continued after
24 October 26, 2001, thus moving this case into a higher penalty
25 of the revised statute.

As to Mr. Jayyousi, he has lived in the United States for almost 30 years. He has served in the United States Navy and became a U.S. citizen. He married and started a family. He is an educated man, finished college and has a Ph.D. He exhibited excellent competence level in all of his employment. He has held a variety of employment situations; the University System of California, the Detroit public schools and the Washington D.C. public schools.

He has worked in the United States and abroad on very sophisticated engineering projects. Some of these projects involve issues relating to and involving our allies, military and possible access to sensitive and confidential information.

The people who work with him all spoke highly of his effectiveness and his work ethic. He is a devout Muslim. He was willing to discuss religion with others without conflict. He celebrated the peace efforts in the Middle East. He provided assistance to people in his mosque and in the Muslim community. He also is the kind of neighbor that people would want in a community, and many wrote letters of support.

Raised in a refugee camp, he saw firsthand how the sufferers of armed conflict affected communities. When he heard of the armed conflict in the Middle East, Africa and Eastern Europe, he provided financial and other resources to assist those abroad. There is no evidence that Mr. Jayyousi continued his involvement in the instant offense after 1998,

the Islam Report, his publication, and there are no intercepts of Mr. Jayyousi. He totally withdrew from the instant conspiracy in this case.

In fact, the jury specifically found his involvement in these offenses ceased prior to October 26, 2001. By his own statement at sentencing, he moved beyond his actions post 1998. His efforts and energies were directed elsewhere.

Like Mr. Hassoun, Mr. Jayyousi was intercepted over several years. Yet despite government's claim that he is a dangerous individual and deserves to be sentenced to life, the government made no effort to intervene. He continued to work in school systems throughout this country. There is no evidence that Mr. Jayyousi knew, met or even heard of Defendant Padilla prior to these proceedings. As I recall, there are no intercepted phone calls between Mr. Jayyousi and Mr. Padilla.

Law enforcement officials interviewed Mr. Jayyousi on several occasions. He informed law enforcement officials before he left the country where he would be, and he also informed of his whereabouts. He even registered with the government when he moved abroad.

Throughout most of the pretrial and trial, as I stated previously, Mr. Jayyousi was on bond. He found suitable employment despite the restrictions of bond; and despite the seriousness of his charges and the contacts abroad, Mr. Jayyousi complied with all the conditions of release, and

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1 was timely for all court and pretrial proceedings.

2 Mr. Padilla; Mr. Padilla is the only defendant in this
3 matter with a prior criminal record. He has both a juvenile
4 and adult record. His last conviction occurred just prior to
5 the beginning of this conspiracy.

6 He moved to Florida from the Chicago area. He
7 converted to Islam and began to attend the same mosque as
8 Mr. Hassoun. He was also seen at the mosque on Friday prayers
9 and other services. He was often at the mosque where he
10 learned about the conflicts involving Muslim communities in
11 Eastern Europe, Middle East and Africa. He helped out at
12 various mosque functions, and he struggled to learn Arabic as
13 he learned the Qur'an.

14 At the time Mr. Padilla joined the conspiracy, his
15 last criminal conviction was in August 1992, barely 14 months
16 before the beginning of this conspiracy.

17 In 1998, Mr. Padilla left the United States, and there
18 is evidence that he spent time in Europe. There is also
19 evidence, based upon the government exhibit, that he trained at
20 a military training camp. However, based upon the
21 preponderance of the evidence, I do not find GXX1 proof that
22 Mr. Padilla graduated from that program.

23 There are too many inconsistencies; the spelling in
24 the initial translation; the timeframe between the form's
25 initial gathering; and the similarity and spelling of another

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1 supposed graduate of the program.

2 However, in finding Mr. Padilla guilty, the jury
3 accepted the government's interpretation of the conversations
4 between Mr. Padilla and Mr. Hassoun. Also, Mr. Hassoun used
5 Mr. Padilla's Arabic nickname in conversations discussing the
6 conspiracy in coded language.

7 When Mr. Padilla returned to the United States, he was
8 detained at the Chicago Airport. He was subsequently arrested
9 on a material witness warrant out of New York. He was then
10 transferred, and kept in a military brig in South Carolina.

11 The facts of his confinement has been the subject of
12 various pleadings and testimony before this Court. Mr. Padilla
13 was held in solitary confinement in harsh conditions, without a
14 mattress, a Qur'an, books, clock, entertainment or interaction
15 with other relatives or visits. Even an attorney was denied
16 him, and he was subject to extreme and environmental stresses,
17 including extreme noise and temperature variation.

18 The government argues that I cannot take prior
19 conditions of confinement, or the potential for harsh
20 conditions, into consideration in fashioning a sentence.

21 I disagree.

22 The cases where pretrial conditions were not allowed
23 were situations where the District Court found that the
24 conditions did not rise to the level to be considered, or where
25 the Court found the defendant had presented insufficient

1 evidence to support a finding concerning the harsh pretrial
2 condition. See Presley 345 F.3d 1205 and Ramirez-Gutierrez at
3 503 F.3d 643.

4 I do find that the conditions were so harsh for
5 Mr. Padilla and against the standard of the usual conditions of
6 pretrial that they warrant consideration in the Court
7 fashioning a sentence in this case.

8 I want to take a moment. My initial order of the
9 issue of Padilla's pretrial detention related to the relevancy
10 of the detention to the charges in this indictment. I found
11 that the conditions were irrelevant in the criminal conduct
12 alleged in the indictment. I stand by that ruling; however, I
13 do want to state at the time of Mr. Padilla's initial
14 detention, the evidence produced at this trial, specifically
15 the intercepted phone calls, were all available to the United
16 States.

17 The sentences that I announce today do reflect the
18 seriousness of the offense and each defendants' culpability in
19 criminal conduct. I have already discussed the seriousness of
20 the offenses and each defendants' culpability. The sentence in
21 this case will serve to inform others that support of
22 activities abroad, no matter how well-intentioned, conspiracy
23 to support murder, maiming and kidnapping will not be tolerated
24 in this country.

25 The defendants in this case were involved in a

1 situation that was very specific in time. The activities were
2 limited to issues abroad and not in the United States. This;
3 however, does not excuse the activities and still warrant a
4 sentence of incarceration.

5 It should also be noted that an incarcerative sentence
6 also recognizes that these defendants will unlikely engage in
7 new criminal conduct, given their age, as they leave the
8 criminal system; that is, as they approach their senior years.

9 Defendants Hassoun and Jayyousi are educated
10 professional men. Each possess unique skills. Mr. Hassoun is
11 a skilled computer programmer. Mr. Jayyousi is an engineer of
12 considerable skills. He has worked on projects that oversee
13 facilities both here and abroad, and he has a Ph.D.

14 It is doubtful that the Bureau of Prisons is capable
15 of providing much in terms of vocational and educational
16 training for these two defendants.

17 Mr. Padilla should be allowed access to vocational and
18 educational training. Prior to leaving the country and his
19 participation in the conspiracy, he was working in a fast food
20 restaurant.

21 Although the bottom of the advisory guideline range is
22 a range of 360 to life, there is no mandatory minimum here.

23 Given the nature of these offenses, incarceration is necessary.
24 I also think it is necessary here to sentence these
25 defendants to prevent unnecessary sentencing disparity. The

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1 defense pointed to a number of different cases around the
2 country with similar charges where the defendants received
3 substantially less time than 360 months, which is the bottom of
4 the guideline range here.

5 The government counters that the counts of those
6 convictions did not involve the conspiracy to kill, kidnap,
7 maim or injure, what the government calls the solicitation
8 counts.

9 David Hicks actually was involved in a conflict
10 involving American troops abroad. Yahya Goba, who testified in
11 this case, received a sentence of ten years. It should be
12 noted that he was charged with the new statute of terrorists
13 receiving terrorist's training. He plead guilty and received
14 those ten years.

15 Amed Omar Ali, out of the Eastern District of
16 Virginia, was charged in a nine count indictment. The
17 indictment charged, among other crimes, conspiracy to
18 assassinate a President, conspiracy to commit aircraft piracy,
19 conspiracy to destroy aircraft along with 239(b) and 239(a).
20 The District Court in that case rejected a life sentence and
21 sentenced Mr. Ali to a sentence of 369 months.

22 In Mandhai, the Court of Appeals found a sentencing
23 range of 188 to 235 months was excessive. Although, once
24 again, that is a different charge and less serious than the Ali
25 charge, Mandhai was charged with an attempt to conspire to bomb

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1 electrical transformers in Florida in retaliation of the U.S.
2 Government's support of Israel. He planned to contact
3 government officials after the attack, and demanded a cease of
4 support of countries that oppose Muslims. After two appeals,
5 Mandhai ultimately received a sentence of 168 months.

6 In Awan, which we discussed extensively over the past
7 two weeks, the District Court declined to apply the terrorism
8 enhancement, and sentenced the defendant to 168 months. Once
9 again, Awan was not charged with the solicitation of murder
10 count, rather 239(a).

11 The so-called 20th Hijacker Zacarias Moussaoui
12 received life without parole.

13 Terry Nichols, an accomplice of Timothy McVeigh,
14 responsible for the death of over 150 people, including
15 children, received a life sentence. I point to these two
16 because this is an example, in the past, of what kind of
17 behavior warrants a life sentence, and why I am rejecting life
18 as a sentence in this case.

19 For all the reasons I enunciated above, I will vary
20 from the guideline and sentence the defendants below the
21 advisory guideline range as follows:

22 As to Defendant Hassoun, I sentence the defendant at a
23 level 33, criminal history category four, to 203 months.

24 However, since the defendant will not receive credit for his
25 time in Immigration custody, I am varying the sentence downward

1 by 15 months to a term of 188 months.

2 As to Defendant Jayyousi, recognizing his minimal time
3 in this conspiracy and his efforts consistent with withdrawal,
4 I sentence the defendant at a level 31, criminal history
5 category four, of 152 months.

6 As to Defendant Padilla, unlike the other two
7 defendants, he has a significant criminal record. However, as
8 I stated before, I recognize the significant time that he has
9 spent in harsh conditions. I, therefore, sentence him at a
10 level 33, and 250 months, but vary the sentence downward by 42
11 months to reflect his prior detention in this matter, 208
12 months.

13 As to Defendant Hassoun, it is the judgment of the
14 Court that he be committed to the Bureau of Prisons for a term
15 of 188 months. The term consists of 188 months as to Count 1,
16 60 months as to Count 2, and 180 months as to Count 3. All to
17 be served concurrently.

18 Upon release of imprisonment, the defendant shall be
19 placed on supervised release for a term of 20 years. The term
20 consists of 20 years as to Counts 1 and 3, and three years as
21 to Count 2, also all to run concurrently.

22 Within 72 hours of release from the custody of the
23 Bureau of Prisons, the defendant shall report to the Probation
24 Office where he is released. While on supervised release, the
25 defendant shall not commit any crimes, shall be prohibited from

1 possessing a firearm or other dangerous device, and shall not
2 possess a controlled substance, and shall comply with the
3 standard conditions of supervised release.

4 He shall surrender to Immigration for removal after
5 imprisonment, comply with the financial disclosure
6 requirements, the permissible search requirements. All are
7 outlined in Part G of the pre-sentence report, and the
8 defendant shall pay the \$300 special assessment. That is \$100
9 as to each of the three counts.

10 As to Defendant Jayyousi, it is the judgment of the
11 Court that the Defendant Jayyousi is sentenced to the Bureau of
12 Prisons for a term of 152 months. The term consists of 152
13 months as to Count 1. 60 months as to Count 2. 120 months as
14 to Count 3. All to be served concurrently.

15 Upon release of imprisonment, the defendant shall be
16 placed on supervised release for a term of 20 years. This term
17 consists of 20 years as to Count 1. Three years as to Count 2
18 and 3. All such terms to run concurrently.

19 Within 72 hours of release from the custody of the
20 Bureau of Prisons, the defendant shall report in person to the
21 Probation Office where he is released. While on supervised
22 release, the defendant shall not commit any crimes, will be
23 prohibited from possessing a firearm or other dangerous device,
24 and shall not possess a controlled substance, and shall comply
25 with the standard conditions of supervised release including

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1 the following special conditions:

2 The financial disclosure requirements, the employment
3 requirements; and the permissible search requirements. All of
4 these are more specifically outlined in Part G of the
5 pre-sentence report, and he shall also pay the special
6 assessment of \$300.

7 As to Defendant Padilla, the total offense level is
8 33, and the criminal history category is six.

9 It is the judgment of the Court the defendant is
10 sentenced to a term of 208 months as to Count 1. 60 months as
11 to Count 2. 180 months as to Count 3. All to be served
12 concurrently.

13 Upon release of imprisonment, the defendant shall be
14 placed on supervised release for a term of 20 years. That term
15 consists of 20 years as to Counts 1 and 3, and three years as
16 to Count 2. All to run concurrently.

17 Within 72 hours of release from the Bureau of Prisons,
18 the defendant shall report to the Probation Office where he is
19 released. While on supervised release, he shall not possess
20 any firearms or other dangerous devices, shall not possess a
21 controlled substance, and shall comply with the standard
22 conditions of supervised release including the following
23 special conditions:

24 Mental health treatment; the financial disclosure
25 requirements; the employment requirements and the permissible

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1 search requirements. All are outlined more specifically in
2 Part G of the pre-sentence report, and he shall pay the special
3 assessment as to each of the counts in the amount of \$300.

4 As to Defendant Hassoun, does the defendant or his
5 counsel object to the Court's findings of fact or the manner in
6 which the sentence was pronounced?

7 MR. SWARTZ: Your Honor, we would like to preserve all
8 of our issues that we raised during the sentencing pursuant to
9 Jones. To the extent that we need to preserve everything again
10 that we raised during the sentencing; yes, Your Honor, I want
11 to object.

12 THE COURT: Mr. Hassoun, you have a right to appeal
13 the sentence imposed. Any notice of appeal must be filed
14 within ten days after the entry of the judgment. If you are
15 unable to pay the cost of appeal, you may apply for leave in
16 forma pauperis. Do you understand that, sir?

17 DEFENDANT HASSOUN: Yes.

18 THE COURT: As to the Defendant Jayyousi, does the
19 defendant or his counsel object to the Court's findings of fact
20 or the manner in which sentence was pronounced?

21 MR. SWOR: Your Honor, as counsel for Mr. Hassoun did,
22 we will preserve all of our previous objections.

23 THE COURT: Mr. Jayyousi, I will also remind you that
24 you have a right to appeal this sentence. Any notice of appeal
25 must be filed within ten days after the entry of the judgment.

1 If you are unable to pay the cost of an appeal, you may apply
2 for leave to appeal in forma pauperis. Do you understand that?

3 DEFENDANT JAYYOUSI: Yes, Your Honor.

4 THE COURT: As to the Defendant Padilla, does the
5 defendant or his counsel object to the Court's findings of fact
6 or the manner in which the sentence was pronounced?

7 MR. CARUSO: Likewise, Your Honor, we would preserve
8 all of our previously made objections both factually and
9 legally.

10 THE COURT: Mr. Padilla, you have a right to appeal
11 the sentence imposed. Any notice of appeal must be filed
12 within ten days after the entry of judgment. If you are unable
13 to pay the cost of appeal, you may apply for leave to appeal in
14 forma pauperis. Do you understand that?

15 DEFENDANT PADILLA: Yes, I do, Your Honor.

16 THE COURT: Counsel for the United States, do you
17 object to the sentence outside of the guideline range.

18 MR. SHIPLEY: Yes, Your Honor, so we are clear on the
19 record, because, obviously, the Court's ruling has deviated
20 from the PSI, so we are clear in our objections, in addition to
21 the objections previously made on the record, we object to the
22 Court's changes in paragraph 12, 17 and 53 of the offense
23 conduct and the corresponding paragraphs in Jayyousi's PSI.
24 We object to the Court's failure to give Jayyousi a
25 three level, or at least a two level increase for role. We

1 object to the Court's failure to give Hassoun a two or three
2 level increase for role. We object to the Court's departure
3 downward under 481.3 to a level 4 and also for failure to
4 consider a level 5.

5 Finally, we object that the sentences imposed are
6 unreasonable in light of the 3553 factors and improperly
7 calculated under the advisory guideline range, specifically
8 including, but not limited to, the Court's finding regarding
9 the history and characteristics of these defendants, including
10 the Court's finding that the jury found that Jayyousi's
11 criminal conduct ceased in 1997; the Court's consideration of
12 Padilla's detention as an enemy combatant and alleged
13 conditions of his detention, as well as the Court's
14 consideration of Hassoun's Immigration status and the time he
15 served there. For all of those reasons, and reasons stated
16 previously on the record, those are our objections.

17 THE COURT: Thank you, Mr. Shipley. Anything further
18 on behalf of the United States?

19 MR. KILLINGER: Nothing, Your Honor.

20 THE COURT: Anything further on behalf of Mr. Hassoun?
21 MR. SWARTZ: Yes, Your Honor, we would ask the Court
22 for a recommendation designation to FCI in Miami. We would
23 also ask the Court to enter an order, and we can supply the
24 written order, that Mr. Hassoun be kept at the FDC while the
25 pending charges, the severed counts, are pending. Until the

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1 government decides what we are going to do with that, and we
 2 decide what is going to happen with those counts, Your Honor,
 3 we would ask that he be kept at FDC here, where he can be seen
 4 by his counsel, has got his materials from the case, he can
 5 consult with us and see the materials. It will avoid the
 6 disruption of the representation of Mr. Hassoun.

7 THE COURT: Let me ask Mr. Killinger. Mr. Killinger,
 8 do you plan to proceed with the severed counts prior to the
 9 appeal in this matter?

10 MR. KILLINGER: I guess that depends on discussions
 11 that we have with the defense. We haven't had any, Judge, to
 12 be perfectly candid with you. We do plan to proceed with the
 13 severed counts.

14 THE COURT: I will make the recommendation,
 15 Mr. Swartz. As you know, the Bureau of Prisons has a mind of
 16 its own, particularly with regards to these matters. They may
 17 be well within their rights if they determine that after you
 18 speak with the government that it may be some time before they
 19 proceed with the severed counts, and they will wait to see what
 20 happens with the appeal in this matter.

21 MR. SWARTZ: I've been talking with the marshals about
 22 this, and I don't want to put them on the spot, but I
 23 understand in cases similar to this where there are pending or
 24 severed counts that the BOP may keep somebody here at the FDC
 25 while they are pending. They may need an order from the Court

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1 or something in writing to alert them that this will be treated
 2 differently than to just ship him out, because technically they
 3 are still pre-trial.

4 MR. KILLINGER: Judge, I am sure that FDC is quite
 5 aware of what he is charged with.

6 THE COURT: I am certain they will work this out. But
 7 I want you to know, and I am certain that you have discussed
 8 this with your client, this is probably one of the many
 9 administrative decisions that the BOP will make, that I have
 10 little or no control over.

11 MR. SWARTZ: We all know that, Your Honor, that they
 12 will do what they do. As far as the recommendation to FCI
 13 Miami?

14 THE COURT: I will make a recommendation if he didn't
 15 remain at FDC Miami that there be a recommendation that he be
 16 housed at FCI Miami.

17 MR. SWARTZ: Even as a permanent designation.

18 THE COURT: I will make that recommendation.

19 MR. SWARTZ: Thank you.

20 THE COURT: Mr. Swor?

21 MR. SWOR: We ask that the Court recommend to the BOP
 22 that Doctor Jayyousi be housed at Milan, Michigan.

23 THE COURT: I will make that recommendation.

24 Mr. Jayyousi, I am sure that your counsel has
 25 explained to you that it's a recommendation. Once again, I

1 won't know what administrative procedures the BOP will take.

2 DEFENDANT JAYYOUSI: Yes, Your Honor. Thank you.

3 THE COURT: Is there any recommendation for the

4 Defendant Padilla?

5 MR. CARUSO: Yes, Your Honor. We would like you to

6 recommend to the BOP, given that Jose's family all reside in

7 South Florida, a facility that is as close to South Florida as

8 possible.

9 THE COURT: I will make that recommendation,

10 Mr. Padilla. Once again, I will inform you, as I have to the

11 other defendants, that that is a decision that I have little or

12 no control over, but I will make that recommendation.

13 Thank you very much everyone.

14 [Sentencing proceedings conclude at 12:15 p.m.]

15 C E R T I F I C A T E

16 I hereby certify that the foregoing is an accurate

17 transcription of proceedings in the above-entitled matter.

18
19
20 DATE

ROBIN MARIE DISPENZIERI, RPR
Official Federal Court Reporter
United States District Court
301 North Miami Ave., 6th Floor
Miami, FL 33128 - (305)523-5158

